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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,436	03/02/2004	Benjamin T. Tiberius	2905.2.1.2	5415

28049 7590 06/24/2004

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SALT LAKE CITY, UT 84111

EXAMINER

CHAMBERS, TROY

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/791,436	TIBERIUS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Troy Chambers	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-10, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 4-6, 11 and 14-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the gun magazine having: a retainer directly engaging at least one of the plurality of projectiles when preventing the release of the plurality of projectiles; and, the engagement of the release with the frame (claims 14-19) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, 3, 7, 8, 9, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5711286 issued to Petrosyan. Petrosyan discloses a gun 100.

2. With respect to claim 1, Petrosyan discloses a gun 100, comprising a frame 110; a plurality of spherical projectiles 600; a magazine 400 comprising a connector 434 attaching the magazine to the frame 110 (col. 17, 63-67), and a

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projectile store comprising an interior cavity 430 having a width in the lateral direction (the fore and aft direction with respect to the gun) effective to stagger selected projectiles (Fig. 14) and a retainer 450, 435; a barrel 120; and an action 270.

3. With respect to claim 2, refer to Figs. 14 and 18.
4. With respect to claim 3, refer to Fig. 11.
5. With respect to claim 7, Petrosyan discloses a retainer release 506.
6. With respect to claim 8, Petrosyan discloses a biasing member 440.
7. With respect to claim 9, Petrosyan discloses a 3-dimensional chute 430 and an impeller 433.
8. With respect to claim 10, Petrosyan discloses a biasing member 440.
9. With respect to claim 12 and 13, Petrosyan discloses a gun 100, comprising a frame 110; a plurality of spherical projectiles 600; a magazine 400 comprising a connector 434 attaching the magazine to the frame 110 (col. 17, 63-67), and a projectile store comprising an interior cavity 430 having a width in the lateral direction (the fore and aft direction with respect to the gun) effective to stagger selected projectiles (Fig. 14), and impeller 433 and a retainer 450; a barrel 120; and, an action 270.

***Allowable Subject Matter***

10. Claims 4-6, 11 and 14-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

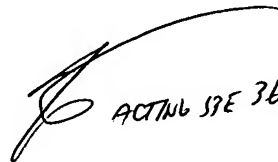
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**Conclusion**

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents listed on form PTO-892 are cited as of interest to show similar guns.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (703) 308-5870. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (703) 306-4198.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

 ACTING SFE 3641

